In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-360

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. B) is reported at 460 F. 2d 497. The opinion of the district court (Pet. App. A) is reported at 319 F. Supp. 737.

JURISDICTION

The judgment of the court of appeals was entered on May 3, 1972. A petition for rehearing with sug-

gestion of rehearing *en banc* was denied on June 2, 1972. The petition for a writ of certiorari was filed on August 30, 1972. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the maintenance of local unions segregated on the basis of race violates Title VII of the Civil Rights Act of 1964.

STATUTE INVOLVED

The relevant provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, *et seq.*, are set forth at page 4 of the petition.

STATEMENT

The Attorney General brought this suit pursuant to Section 707 of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-6, alleging that the defendants maintained in the Port of Baltimore labor unions, hiring halls, and work gangs which were segregated on the basis of race, and that such practices tended to deprive black longshoremen of equal employment opportunities.

The district court found that defendant Local 829 was established and is maintained as a white local, and defendant Local 858 was established and is maintained as a black local (Pet. App. A, pp. A-12 to A-13).[1] The court also found that defendants have

[1] The court found that there are only four blacks among the 1,155 members of Local 829, and only five whites in Local

maintained segregated hiring halls and work gangs (Pet. App. A, pp. A-8, A-10). It ruled that the maintenance of racially segregated unions necessarily violates Section 703(c)(2), because such segregation "tend[s] to deprive individual members of equal employment opportunities" (Pet. App. A, p. A-14).

In considering the appropriate relief, the district court found that black longshoremen have not been employed by the stevedoring companies in the preferred non-gang capacities of foreman, gearman, and mechanic, and that as recently as 1969-1970 members of the white local worked an average of 120 hours more per year than blacks (Pet. App. A, pp. A-31 to A-33). To remedy the violations of Title VII, the district court ordered that the segregated hiring halls be merged and that vacancies in the segregated work gangs be filled on a non-racial, seniority basis. The court also required the merger of Locals 829 and 858.

On appeal by the union and cross-appeal by the government, the court of appeals, by a divided vote, affirmed the judgment of the district court in all respects.[2] The court ruled that maintenance of segre-

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858's membership of 1,226 (Pet. App. A, p. A-7). It was undisputed that the members of both locals perform the same type of work (Pet. App. A, pp. A-7 to A-8).

[2] The government had cross-appealed from the district court's refusal to order immediate desegregation of the work gangs. The court of appeals held that such relief was not warranted at this time, noting that the district court had ordered certain reforms of the gang system and had retained jurisdiction to modify its decree "if, after a trial period, it should appear that additional action is necessary to further

gated locals "inevitably breeds discrimination that violates the Act," and even the good faith efforts of union officials "cannot avoid this inherent inequality" (Pet. App. B, p. A-47). For example, to eliminate the discrimination against blacks in the preferred non-gang jobs it is necessary to bargain with the stevedoring companies. "But the officers of the white local owe no duty to the members of the black local, and it is unrealistic to expect them to participate in hard bargaining on behalf of black longshoremen" (Pet. App. B, p. A-50). Merger would impose a duty on all bargaining representatives to seek elimination of racial discrimination (Pet. App. B, p. A-51).

ARGUMENT

The sole issue raised by this petition is the correctness of the rulings below requiring merger of the two segregated locals operating in the Port of Baltimore. Since this holding properly implements the statutory language and purpose and accords with the decision of the only other court of appeals that has ruled on the issue, review by this Court is not warranted.

1. Section 703(c)(2) of Title VII, 42 U.S.C. 2000e-2(c)(2), makes it unlawful for a labor organization "to limit, segregate, or classify its membership* * * in any way which would deprive or *tend to deprive* any individual of employment opportunities * * * because

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implement the court's stated objectives" (Pet. App. B, p. A-74). No issue with respect to the gang system is raised in this Court.

of such individual's race * * *" (emphasis added). Both the district court and the court of appeals found that the maintenance of local unions segregated on the basis of race inevitably tends to deprive individuals of equal employment opportunities. Since their jurisdiction coincides, the two locals compete for the same work opportunities, and the members of the local with less influence are necessarily disadvantaged. As the court of appeals stated, "Racial segregation limits both black and white employees to advancement [and employment opportunities] only within the confines of their races" (Pet. App. B, p. A-47).[3]

The only other court of appeals that has decided the issue also concluded for similar reasons that Title VII prohibits segregated locals; it ruled that the district court there had "erred in refusing to hold that the failure to consolidate the locals violates section 703(c) of the Act * * *." *United States* v. *Jacksonville Terminal Co.*, 451 F. 2d 418, 457 (C.A. 5), certiorari denied, 406 U.S. 906.[4]

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[3] The court of appeals also recounted the evidence showing that the black longshoremen here had in fact been deprived of equal employment opportunities (Pet. App. B, pp. A-48 to A-49).

[4] Several district courts have ordered mergers of segregated local unions. See *Musicians Protective Union Local 274* v. *American Federation of Musicians*, 329 F. Supp. 1226 (E.D. Pa.); *United States* v. *Chesapeake and Ohio Ry. Co.*, 3 EPD ¶ 8331 (E.D. Va.); *Hicks* v. *Crown Zellerbach Corp.*, 319 F. Supp. 314 (E.D. La.); *United States* v. *Local 189, United Papermakers*, 301 F. Supp. 906 (E.D. La.), affirmed, 416 F. 2d 980 (C.A. 5). In *United States* v. *International Longshoremen's Association*, 334 F. Supp. 976 (S.D. Tex.), the

2. Petitioners contend that the longshoremen's First Amendment right to freedom of association bars federal courts from securing equal employment opportunities for all union members by ordering the merger of segregated locals. But a labor union is not a private club; rather, as this Court has recognized, it is the representative of all those working under its jurisdiction and is "clothed with power not unlike that of a legislature which is subject to constitutional limitations on its power to deny, restrict, destroy or discriminate against the rights of those for whom it legislates and which is also under an affirmative constitutional duty equally to protect those rights." *Steele* v. *Louisville and Nashville Railroad Co.*, 323 U.S. 192, 198. Accordingly, unions are subject to congressional regulation designed to protect the rights of all members and potential members and to ensure that persons are not denied membership or other benefits because of their race.

The cases relied on by petitioners are inapposite.[8]

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district court, while finding that segregated locals deprived blacks and Chicanos of equal employment opportunities, indicated a reluctance to order a merger. No final order has yet been entered in that case.

[8] As the court below stated (Pet. App. B, p. A-53):

> The district court's order does not conflict with NAACP v. Alabama, 357 U.S. 449 (1958), and Thomas v. Collins, 323 U.S. 516 (1945), on which the union primarily relies. These cases do not create a right in white men or black men to avoid association with persons of the other race. On the contrary, they are leading authorities charting the right of all persons to associate for political and economic goals.

Merger in this case does not deprive longshoremen of the right to associate for the advancement of political or economic ends; it simply ensures that this right will be made available to all on a non-racial basis. In similar circumstances this Court has held that right-to-work laws do not violate the First Amendment rights of union members:

> There cannot be wrung from a constitutional right of workers to assemble to discuss improvement of their own working standards, a further constitutional right to drive from remunerative employment all other persons who will not or can not participate in union assemblies. [*Lincoln Federal Labor Union* v. *Northwestern Iron & Metal Co.*, 335 U.S. 525, 531.]

Similarly, there cannot be wrung from a constitutional right of workers to assemble to discuss improvement of their working conditions a right to exclude other workers from such assemblies on the basis of their race.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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